

[Cite as *State v. Walden*, 2016-Ohio-47.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY**

STATE OF OHIO

Plaintiff-Appellee

V.

ROBERT WALDEN

Defendant-Appellant

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Appellate Case No. 2014-CA-84

Trial Court Case No. 2014-CR-287

(Criminal Appeal from
Common Pleas Court)

OPINION

Rendered on the 8th day of January, 2016.

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WELBAUM, J.

{¶ 1} Defendant-appellant, Robert Walden, appeals from the 11-year prison sentence he received in the Clark County Court of Common Pleas after he pled guilty to attempted murder. Specifically, Walden claims the trial court failed to properly weigh and analyze the purposes and principles of sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12. Walden also claims the trial court erred in failing to state its findings in the Judgment Entry of Conviction. We find no error in the trial court's sentencing decision; therefore, the judgment of the trial court will be affirmed.

{¶ 2} On April 21, 2014, the Clark County Grand Jury returned a four count indictment against Walden charging him with one count of felonious assault, one count of violating a protection order, one count of domestic violence, and one count of attempted murder. According to the State's Amended Bill of Particulars, the charges stemmed from allegations that Walden physically attacked his girlfriend by knocking her to the ground and cutting her throat with a knife after learning that she had filed a protection order against him.

{¶ 3} Following the indictment, Walden pled guilty to attempted murder, a first degree felony, in exchange for the State dismissing the other three charges against him. Upon accepting Walden's guilty plea, the trial court ordered a presentence investigation report and the matter proceeded to sentencing. At the sentencing hearing, Walden apologized for his actions, professed his love for the victim, and requested lenience. Nevertheless, after reciting the facts of the case and discussing various sentencing factors, the trial court imposed the maximum sentence of 11 years in prison.

{¶ 4} Walden now appeals from his 11-year prison sentence, raising the following single assignment of error for review:

THE TRIAL COURT ERRED TO THE PREJUDICE OF MR. WALDEN
WHEN THE COURT SENTENCED HIM TO THE MAXIMUM PRISON
SENTENCE OF 11 YEARS.

{¶ 5} Under his sole assignment of error, Walden challenges his 11-year maximum prison sentence by claiming the trial court failed to properly weigh and analyze the purposes and principles of sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12. Walden also claims the trial court erred in only utilizing the statutory language of R.C. 2929.11 and R.C. 2929.12 in his Judgment Entry of Conviction as opposed to making specific findings under those provisions and then stating the findings in the entry. We find no merit to Walden's claims.

{¶ 6} In *State v. Rodeffer*, 2013-Ohio-5759, 5 N.E.3d 1069 (2d Dist.), this court held it would no longer use an abuse-of-discretion standard in reviewing felony sentences, but rather, would apply the standard of review set forth in R.C. 2953.08(G)(2). *Id.* at ¶ 29. Under that statute, an appellate court may increase, reduce or modify a sentence, or it may vacate the sentence and remand for resentencing, only if it "clearly and convincingly" finds either:

- (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;
- (b) That the sentence is otherwise contrary to law.

R.C. 2953.08(G)(2)(a)-(b).

{¶ 7} “[A] sentence is not contrary to law when the trial court imposes a sentence within the statutory range, after expressly stating that it had considered the purposes and principles of sentencing set forth in R.C. 2929.11, as well as the factors in R.C. 2929.12.” *Rodeffer* at ¶ 32, citing *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 18. Therefore, “a maximum sentence is not contrary to law when it is within the statutory range and the trial court considered the statutory purposes and principles of sentencing as well as the statutory seriousness and recidivism factors.” (Citations omitted.) *State v. Martin*, 2d Dist. Clark No. 2014-CA-69, 2015-Ohio-697, ¶ 8.

{¶ 8} “The trial court has full discretion to impose any sentence within the authorized statutory range, and the court is not required to make any findings or give its reasons for imposing maximum or more than minimum sentences.” (Citation omitted.) *State v. King*, 2013-Ohio-2021, 992 N.E.2d 491, ¶ 45 (2d Dist.). “However, the trial court must comply with all applicable rules and statutes, including R.C. 2929.11 and R.C. 2929.12.” (Citation omitted.) *Id.* Although there is a mandatory duty to *consider* the relevant statutory factors under R.C. 2929.11 and R.C. 2929.12, these statutes do not require the court to explicitly state any findings about these factors. *State v. Thomas*, 2d Dist. Montgomery No. 26123, 2014-Ohio-5262, ¶ 22; *State v. Graham*, 2d Dist. Montgomery Nos. 26205, 26206, 2015-Ohio-896, ¶ 18-19.

{¶ 9} As previously noted, Walden was convicted of attempted murder, a first degree felony, and was ordered to serve a maximum sentence of 11 years in prison. Pursuant to R.C. 2929.14(A)(1), Walden’s sentence is within the authorized statutory range. In addition, Walden’s Judgment Entry of Conviction provides that the trial court

“considered the purposes and principles of sentencing under R.C. 2929.11, the seriousness and recidivism factors relevant to the offense and offender pursuant to R.C. 2929.12, and * * * the sentencing guidelines contained in R.C. 2929.13.” Judgment Entry of Conviction/Warrant for Removal (July 23, 2014), Clark County Court of Common Pleas Case No. 14-CR-0287, Docket No. 20, p. 1.

{¶ 10} We note that this court has held that a defendant’s sentence is not contrary to law when the trial court expressly states in its sentencing entry that it had considered R.C. 2929.11 and R.C. 2929.12, even if the court neglected to mention these statutes at the sentencing hearing. *State v. Battle*, 2d Dist. Clark No. 2014 CA 5, 2014-Ohio-4502, ¶ 15, citing *State v. Miller*, 2d Dist. Clark No. 09-CA-28, 2010-Ohio-2138, ¶ 43. In this case, however, the trial court not only mentioned that it had considered R.C. 2929.11 and R.C. 2929.12 in the Judgment Entry of Conviction, but it also considered the seriousness and recidivism factors under R.C. 2929.12 on the record at Walden’s sentencing hearing. Specifically, the trial court stated the following before imposing Walden’s 11-year prison sentence:

[T]he victim of the offense suffered serious physical and psychological harm as a result of the offense; and the Defendant’s relationship with the victim facilitated the offense. There was a prior adjudication of delinquency with the Defendant’s record. Based on that juvenile court record, it does not appear that the Defendant was rehabilitated to a satisfactory degree after his adjudication. The Defendant does have a history of criminal convictions and has not responded favorably to sanctions previously imposed. As noted, those convictions contain theft offenses and receiving

stolen property[,] but also two prior domestic violences (sic), an abduction, and an assault. The violence has escalated now to an attempt of this man trying to take this lady's life. The Defendant says he's sorry and, in fact, has admitted to everything, which would indicate some remorse. There is no military history to consider. The Defendant scored moderate on the Ohio Risk Assessment Survey.

Disposition Trans. (July 22, 2014), p. 8.

{¶ 11} The record further reveals that the trial court briefly discussed factors under R.C. 2929.13(D)(2), as the trial court determined that community control sanctions would demean the seriousness of Walden's offense based on the aforementioned seriousness and recidivism factors, and found that a prison sentence was commensurate with the seriousness of his conduct. We do not clearly and convincingly find that the record does not support this finding.

{¶ 12} Based on the foregoing, it is clear that Walden's sentence is neither contrary to law nor clearly and convincingly unsupported by the record. The fact that Walden disagrees with how the trial court weighed the sentencing factors that it considered does not render a sentence unauthorized by law or otherwise contrary to law. See *State v. Plemons*, 2d Dist. Montgomery Nos. 26434, 26435, 26436, 26437, 2015-Ohio-2879, ¶ 14, citing *Rodeffer*, 2013-Ohio-5759, 5 N.E.3d 1069 at ¶ 32. Walden also incorrectly asserts that the trial court was required to make and include specific findings regarding the sentencing factors in the Judgment Entry of Conviction. See *Thomas*, 2d Dist. Montgomery No. 26123, 2014-Ohio-5262 at ¶ 22; *Graham*, 2d Dist. Montgomery Nos. 26205, 26206, 2015-Ohio-896 at ¶ 18-19. We therefore find no error in the trial court's

sentencing decision.

{¶ 13} In so holding, we reiterate that we have reviewed Walden’s sentence under the standard of review set forth in *Rodeffer*, in which we held that we would no longer use an abuse-of-discretion standard of review for felony sentences, but rather, apply the standard of review set forth in R.C. 2953.08(G)(2). Since then, opinions from this court have expressed reservations as to whether our decision in *Rodeffer* is correct. See, e.g., *State v. Garcia*, 2d Dist. Greene No. 2013-CA-51, 2014-Ohio-1538, ¶ 9, fn.1. Regardless, in the case before us, we find no error in the sentence imposed under either standard of review.

{¶ 14} Walden’s sole assignment of error is overruled and the judgment of the trial court is affirmed.

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HALL, J., concurs.

FROELICH, P.J., concurring:

{¶ 15} Consistent with my concurring opinion in *Rodeffer*, I would find that there was no abuse of discretion and affirm the sentence.

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Copies mailed to:

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